* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on : May 23, 2007
Date of Decision : June 11, 2007

\+ W.P.(C) 15358/2004 & CM No 6413/2005

SOM NATH (DECD.) THR LRs ..... Petitioners
Through Mr. Jayant Bhushan, Senior Advocate
with Mr. N.Menon, Advocate

versus

CANTONMENT EXECUTIVE OFFICER & OTHERS
..... Respondents
Through Mr. Vikas Singh, ASG with
Mr. Gaurav Duggal, Advocate

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

: Dr. S. Muralidhar, J.

1. The challenge in this petition is to an order dated 9.6.2004 passed by the Principal Director, Directorate of Defence Estates, Ministry of Defence, Western Command, Chandigarh dismissing the appeal filed by the petitioner against the orders of the Cantonment Board ('Board'), Delhi, the Respondent No.2 herein, rejecting the application for sanction of a building plan submitted by the petitioner.

2. The facts are that on 25.5.1932 a lease deed was executed by the Secretary of State for Indian Council in favour of M/s. R.S. Bhola Ram & Sons, Delhi Cantonment in exercise of the powers under Section 280 of the Cantonments Act, 1924 ('Act'). In terms of this lease deed a plot of land admeasuring 9096 sq.ft. situated at Artillery Road (Plot No.23 Maude Road) in Delhi Cantonment was leased to

M/s. Bhola Ram & Sons for a nominal rent of Rs.250 per year for a period of thirty years, renewable for further periods on the terms specified therein. The relevant clauses of the lease deed, for the purposes of the present case, read as under:

> "5. Within 36 calendar months next after the date of these presents at their own costs to erect and finish fit for habitation on the premises hereby demised a dwelling house together with all necessary outhouses sewers drains and other appurtenances in accordance with plan or plans to be approval in writing by the Cantonment Authority and not to erect or suffer to be erected on any part of the premises hereby demised any building other than and except the dwelling house and shops hereby covenanted to be erected without the previous consent in writing of the Cantonment Authority.
>
> 6. Not to make any alterations in the plan or elevation of the said dwelling house without such consent as aforesaid nor to use the same or permit the same to be used for any purpose other than that of a dwelling house and shops without the consent of the Cantonment Authority.
>
> 7. At all times during the said term to keep the said dwelling house and shops and premises in good and substantial repair and on the expiration or sooner determination of the said term peaceably to yield up the same in such good and substantial repair unto the Secretary of State."

It is not in dispute that the lease was kept renewed thereafter. On 8.2.1995 the lease was renewed in favour of the present petitioner for a further period up to 31.3.2022.

3. On 27.6.2002 the petitioner submitted an application to the Cantonment Executive Officer for sanction of a building plan whereby it was proposed to construct 24 tenements after demolishing the existing bungalow. The application was placed before the Cantonment Board and the following observations were made on the file:

> "Considered. The building application received from Shri Som Nath for plot No. 23, Maude

Road, Delhi Cantt., is as per the existing building bye-laws. Resolved that the same be forwarded to DEO, Delhi Circle, Delhi Cantt for obtaining NOC from land point of view."

4. Under Section 181 (3) of the Act, an application for sanction of a building plan is required to be referred to the Defence Estates Officer (DEO) "for ascertaining whether there is any objection on the part of Government to such erection or re-erection." In terms of the above provision, a reference was made to the DEO. Thereafter, on 5.6.2003 the following letter was written by the Board to the petitioner:

"To,

Sh. Som Nath,
23 Maude Road,
Delhi Cantt.

Subject: BUILDING SUBMITTED BY SH. SOM NATH BUNGLOW NO.23, MAUDE ROAD DELHI CANTT.

Reference your application dated 21.6.2002.

The building plans submitted by you are returned herewith duly rejected on the following grounds:

i) The proposed construction, if allowed amounts to sub-division of site.

ii) Proposed construction of 24 tenaments after demolishing the existing bungalow amounts to massive commercialization and exploitation of land leased on nominal rentals and thus does not conform to purpose and intent for which lease was granted/executed.

iii) The subject lease in the last leg of operation and there is no provision or further extension of lease and thus construction of 24 tenaments will give rise to unnecessary legal tangles at a stage when it can adversely affect the interest of the Govt. In this regard LMA letter No. 60/5/OPG/QZ(L)(i) dated 10.7.2002 in which LMA has also strongly advocated the case for non-renewal of the lease of building site due to acute deficiency of land.

iv) The proposed construction violates the clause 1(5) &

(6) of the terms of the lease, thus the proposed constructions, if allowed, will amount to gross violations and breach of lease.

Authority CBR No. 13 dated 23.5.2003 (copy enclosed).

Sd/-

Cantonment Executive Officer,

Delhi Cantonment

(Harish Prasad)"

5. Aggrieved by the rejection of its building plan, the petitioner filed an appeal under Section 274 of the Act before the Respondent No.3. By the impugned order dated 9.6.2004 the Respondent No.3 rejected the appeal. Respondent No.3 agreed with the contention of the petitioner that that "DEO erred in rejecting the building plan only for the reason that the rent is nominal and was in the last leg of its operation." However, Respondent No.3 sustained the rejection of the building plan by the DEO on the ground that the construction, if allowed, will lead to a sub-division of site and that "the proposed construction does not conform to the purpose and intent for which the lease was granted and finally and most importantly (in my view) that the proposed construction, if allowed, will violate clauses 1(5) and 1(6) of the terms of lease."

6. Mr. Jayant Bhushan, learned senior counsel appearing for the petitioner made the following submissions:

(a) The reasons given by the DEO for rejecting the building plan have been ipso facto repeated by the Board and therefore this shows non-application of mind by the Board.

(b) Even the reasons given by the DEO are not tenable in law. It is no concern to the DEO that the construction, if allowed, can lead to commercialization. As long as the terms of the lease deed are not violated, there was no

question of rejecting the building plans.

(c) The Board itself had found that the plans conform to the building bye laws. As long as both the building bye-laws and the clauses of the lease deed were complied with, there was no scope for rejecting the building plans in terms of Section 181 (4) of the Act.

7. In reply, Mr. Vikas, learned Additional Solicitor General submits that the scope of interference of this Court with the decision of the Appellate Authority is limited to examining procedural irregularities. The Court while exercising its jurisdiction under Article 226 of the Constitution will not adjudicate on the merits of the decision itself unless the materials considered by the authorities are totally irrelevant or the decision is vitiated by perversity. Alternatively, he submits that the wording of the lease deed did not permit the construction of a building with 24 tenements on the land in question and that the DEO was correct in observing that it would not conform to the purpose and intent of the lease.

8. Section 181 (3) and (4) of the Act read as under:

> "(3) The Board, before sanctioning the erection or re-erection of a building on land which is under the management of the [Defence Estates Officer] shall refer the application to the [Defence Estates Officer] for ascertaining whether there is any objection on the part of Government to such erection or re-erection; and the [Defence Estates Officer] shall return the application together with his report thereon to the Board within thirty days after it has been received by him.
>
> (4) The Board may refuse to sanction the erection or re-erection of any building –
>
> (a) When the land on which it is proposed to erect or re-erect the building is held on a lease [from the Government] if the erection or re-

> erection constitutes a breach of the terms of the lease; or
>
> [(aa) when the land on which it is proposed to erect or re-erect the building is entrusted to the management of the Board by the Government if the erection or re-erection constitutes a breach of the terms of the entrustment of management or contravenes any of the instructions issued by the Government regarding the management of the land by the Board, or]
>
> (b) when the land on which it is proposed to erect or re-erect the building is not held on a lease [from the Government], if the right to build on such land in dispute between the person applying for sanction and the Government."

9. In the instant case, there is no dispute that the procedure outlined in the above provisions has been followed. The question then turns to the scope of the power of the DEO in terms of Section 181 (3). The role of the DEO, under Section 181 (3) of the Act is that of an authority who is required to be consulted prior to the sanctioning of a building plan. The DEO is expected to opine if "there is any objection on the part of the Government to such erection or re-erection." This area of discretion is with the Government. It is clear from a plain reading of this provision that the scope of this discretion of the Government to either give its assent or record its disapproval is not limited to examining whether the building plan conforms to the building bye laws, as was sought to be suggested by the petitioner. If that were true, then the entire purpose of consulting the DEO for ascertaining the views of the Government would be rendered meaningless. This provision appears to have been inserted for examining the desirability or sanctioning the building plan from a perspective not limited to the building bye laws but also the intent and purpose of the lease. Of course, the reasons for either giving or refusing the assent would have to be germane to the exercise. Sub-section (4) of Section 181 of the Act indicates one set of possible

reasons for which the Board may refuse sanction. One such reason is if the re-erection constitutes a breach of the terms of the lease.

10. That necessarily leads us to examining whether the clauses of the lease permit the construction of 24 tenements on the plot in question. What the lease does permit is the construction of “a dwelling house”. The Court finds, on a perusal of the plan which was submitted for the purposes of sanction, that what is proposed to be constructed is basically set of a 24 separate self-contained apartments spread over three floors. No shops are proposed to be constructed. The words “dwelling house” in the context in which it was used, and time at which it was used, i.e 1932, obviously could not have meant 24 separate self-contained units/apartments. In fact the existing structure at plot No.23 Maude road is a “bungalow” which is consistent with the words “a dwelling house”. It would be straining the language to consider a three-storied building with 24 separate apartments and corresponding parking space to be “a dwelling house” as was attempted to be suggested by Mr.Bhushan. Such an interpretation as suggested by the petitioner is not consistent with what was intended by the parties. Looked at from another angle, what is now proposed to be done is that each of these flats when built is capable of being sold to 24 separate individuals. Therefore, here would be 24 flat owners and possibly there might be 24 families living there. That clearly was not intended by the terms of the lease. The DEO is right in expressing the view that the building plan submitted by the petitioner would not conform to the terms of the lease.

11. The other reason given in the letter of rejection is that the construction of 24 tenements would give rise to unnecessary legal

tangles. This also appears to be correct. There is no dispute that the property in question is being held by the petitioner on leasehold basis. Considering that it is located in Delhi Cantonment, it is unlikely to be converted into freehold basis. Therefore, even assuming that the proposed building might conform to the building bye-laws, allowing a residential building consisting of 24 separate flats on a land held on leasehold basis which cannot be converted into freehold and has to be necessarily renewed every 30 years, can only give rise to legal complications. Whether persons in occupation of the building may want a change of status by seeking conversion from leasehold to freehold, whether the policy of the Government at that time would permit such conversion are all matters of speculation.

12. For all the above reasons, the Court finds that the decision not to sanction the building plan in the instant case cannot be termed as perverse, irrational or unreasonable. The interpretation placed by the appellate authority on the clauses of the lease appears to be reasonable. There is no ground to interfere with the impugned order dated 9.6.2004 passed by the Appellate Authority affirming the order dated 5.6.2003 passed by the Board.

13. Accordingly, this writ petition is dismissed with no order as to costs. The pending application also stands dismissed.

Sd/-
S. MURALIDHAR, J.

June 11, 2007
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